



COMMONWEALTH of VIRGINIA

DEPARTMENT OF ENVIRONMENTAL QUALITY NORTHERN REGIONAL OFFICE

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STATE WATER CONTROL BOARD ENFORCEMENT ACTION - ORDER BY CONSENT ISSUED TO McGrath Rent Corp. FOR McGrath RentCorp Storage Facility VWPP Permit: WP4-19-1034

SECTION A: Purpose

This is a Consent Order issued under the authority of Va. Code § 62.1-44.15, between the State Water Control Board and McGrath Rent Corp., regarding the McGrath RentCorp Storage Facility project, for the purpose of resolving certain violations of State Water Control Law and the applicable permit and regulations.

SECTION B: Definitions

Unless the context clearly indicates otherwise, the following words and terms have the meaning assigned to them below:

1. "Board" means the State Water Control Board, a permanent citizens' board of the Commonwealth of Virginia, as described in Va. Code §§ 10.1-1184 and 62.1-44.7.
2. "Department" or "DEQ" means the Department of Environmental Quality, an agency of the Commonwealth of Virginia, as described in Va. Code § 10.1-1183.
3. "Director" means the Director of the Department of Environmental Quality, as described in Va. Code § 10.1-1185.
4. "Discharge" means, when used without qualification, a discharge of a pollutant, or any addition of a pollutant or combination of pollutants, to state waters or waters of the

- contiguous zone or ocean other than a discharge from a vessel or other floating craft when being used as a means of transportation.
5. "Dredging" means a form of excavation in which material is removed or relocated from beneath surface waters.
 6. "Fill" means replacing portions of surface water with upland, or changing the bottom elevation of surface water for any purpose, by placement of any pollutant or material including but not limited to rock, sand, earth, and man-made materials and debris. 9 VAC 25-210-10.
 7. "Impacts" means results caused by those activities specified in § 62.1-44.15:20 A of the Code of Virginia.
 8. "McGrath Rent Corp." means McGrath Rent Corp., a corporation authorized to do business in Virginia and its affiliates, partners, and subsidiaries. McGrath Rent Corp. is a "person" within the meaning of Va. Code § 62.1-44.3}.
 9. "Notice of Violation" or "NOV" means a type of Notice of Alleged Violation under Va. Code § 62.1-44.15.
 10. "NRO" means the Northern Regional Office of DEQ, located in Woodbridge, Virginia.
 11. "Order" means this document, also known as a "Consent Order" or "Order by Consent," a type of Special Order under the State Water Control Law.
 12. "Permit" or "Virginia Water Protection Permit" means an individual or general permit issued under Va. Code § 62.1-44.15:20 that authorizes activities otherwise unlawful under Va. Code § 62.1-44.5 or otherwise serves as the Commonwealth's certification under § 401 of the federal Clean Water Act (33 United States Code ("USC") § 1344.
 13. "Pollutant" means any substance, radioactive material, or heat which causes or contributes to, or may cause or contribute to pollution. 9 VAC 25-210-10.
 14. "Property" or "Site" means the tract of land at Lat. / Long. 38°23'39.1"N, 77°28'08.0"W, in Stafford County, Virginia, owned by McGrath Rent Corp.
 15. "Regulations" means the Virginia Water Protection Permit Program Regulations, 9 VAC 25-210 *et seq.*
 16. "Restoration" means the reestablishment of a wetland or other aquatic resource in an area where it previously existed. Wetland restoration means the reestablishment of wetland hydrology and vegetation in an area where a wetland previously existed. Stream restoration means the process of converting an unstable, altered, or degraded stream corridor, including adjacent areas and floodplains, to its natural conditions.

17. "State Water Control Law" means Chapter 3.1 (§ 62.1-44.2 *et seq.*) of Title 62.1 of the Va. Code. Article 2.2 (Va. Code §§ 62.1-44.15:20 through 62.1-44.15:23) of the State Water Control Law addresses the Virginia Water Resources and Wetlands Protection Program.
18. "State waters" means all water, on the surface and under the ground, wholly or partially within or bordering the Commonwealth or within its jurisdiction, including wetlands. Va. Code § 62.1-44.3 and 9 VAC 25-210-10.
19. "Surface water" means all state waters that are not ground waters as defined in Va. Code § 62.1-255.
20. "Va. Code" means the Code of Virginia (1950), as amended.
21. "VAC" means the Virginia Administrative Code.
22. "Wetlands" means those areas that are inundated or saturated by surface or groundwater at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions. Wetlands generally include swamps, marshes, bogs, and similar areas. 9 VAC 25-210-10.

SECTION C: Findings of Fact and Conclusions of Law

1. McGrath Rent Corp. owns and operates the McGrath RentCorp Storage Facility: a 69-acre under-construction development for the outdoor storage of modular buildings/storage containers, located in Stafford County, Virginia.
2. McGrath Rent Corp. applied for, and was granted, VWP General Permit WP4 coverage under registration number WP4-19-1034 on August 7, 2019, which allowed permanent construction impacts to 0.23 acre of palustrine forested wetland, 0.03 acre of palustrine emergent wetland, and 48 linear feet of stream channel across three separate permitted impact sites of the project.
3. On April 29, 2020, DEQ received a report of potential unauthorized impact to surface waters at the Site due to the failure of erosion and sediment ("E&S") controls following large rain events throughout the month of April. The unauthorized impacts from this discharge and deposition of sediments were reported to be 0.09 acre of wetland and 237 linear feet of stream channel.
4. On May 12 and 19, 2020, Department staff inspected the Property for compliance with the requirements of the State Water Control Law and the Regulations. The DEQ inspector observed evidence of the discharge and unauthorized impacts as reported. The unauthorized impact report received on April 29, 2020, was not accompanied by a full signatory certification. During this inspection, several administrative violations were

observed, including McGrath Rent Corp.'s failure to submit a pre-construction notification, and the failure maintain, or make available upon request, self-inspections on Site for months of December 2019 through March 2020. These self-inspection reports were later submitted to DEQ.

5. Va. Code § 62.1-44.15:20 and the Regulations at 9 VAC 25-210-50 and the Permit at Part I.A prohibit dredging or filling of surface waters except in compliance with a Permit issued by the Director. McGrath Rent Corp. is permitted under WP4-19-1034, however the water impacts that DEQ was notified of on April 29, 2020, were not permitted impacts.
6. Part II.E.11 of the Permit states that all submittals required by the VWP general permit shall contain the following signed certification statement: "I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violation."
7. The Permit at Part II.E requires written notification to the Department prior to the start of construction activities at the first permitted impact area.
8. The Regulation at 9 VAC 25-690-100 at Part II.B, and Part I.A of the Permit, require that construction activities authorized by the Permit shall be monitored and documented in monthly inspections, and that the monthly inspection report forms shall be maintained on site and made available for Department review upon request during normal business hours.
9. On May 26, 2020, DEQ issued NOV No. 2005-001453 for the violation of Va. Code § 62.1-44.15:20 and 9 VAC 25-210-50.
10. On June 9, 2020, Department staff met with representatives of McGrath Rent Corp. to discuss the violations, including McGrath Rent Corp.'s response dated May 28, 2020. McGrath Rent Corp. disclosed that the unauthorized impacts were due to the failure of E&S controls following significant rain events, and that it had removed the sediments from the impacted waters, pursuant to a corrective action plan developed by McGrath's consultant. Additionally, McGrath Rent Corp. submitted copies of its monthly self-inspections for the months of December 2019 through May 2020, and noted that these inspection reports had been maintained in electronic form at the time of the inspection. McGrath also indicated that the failure to submit a pre-construction notification to DEQ was an administrative oversight.
11. McGrath submitted further written response to NOV No. 2005-001453 on June 19, 2020.

12. On August 27, 2020, DEQ received a report of unauthorized impact to surface waters at the Property on August 21, due to the failure of E&S controls on the Site following a significant rain event on the same day, and the discharge and deposition of sediments to 0.17 acre of wetland and 1,200 linear feet of stream channel. Additional information regarding the release was submitted on September 1 and 4, 2020. McGrath implemented corrective actions to address impacts of the release.
13. On September 17, 2020, DEQ issued NOV No. 2009-001547 to McGrath Rent Corp. for the unauthorized impacts reported on August 27, 2020.
14. Based on the results of the May 12 and May 19, 2020, inspections, the June 9, 2020, meeting, and the documentation submitted on April 29, 2020, July 30, 2020, and August 27, 2020, the Board concludes that McGrath Rent Corp. has violated:
 - a. Permit conditions Part I.A, Part II.B, Part II.E, and Part II.E.11;
 - b. the Regulation at 9 VAC 25-210-50;
 - c. and Va. Code § 62.1-44.15:20 as described in paragraphs C(1) through C(13), above.
15. DEQ VWPP staff conducted a follow-up site inspection on February 17, 2021, and noted the site to be in compliance.

SECTION D: Agreement and Order

Accordingly, by virtue of the authority granted it in Va. Code §§ 62.1-44.15, the Board orders McGrath Rent Corp., and McGrath Rent Corp. agrees to pay a civil charge of \$44,415 within 30 days of the effective date of the Order in settlement of the violations cited in this Order.

Payment shall be made by check, certified check, money order or cashier's check payable to the "Treasurer of Virginia," and delivered to:

Receipts Control
Department of Environmental Quality
Post Office Box 1104
Richmond, Virginia 23218

McGrath Rent Corp. shall include its Federal Employer Identification Number (FEIN) with the civil charge payment and shall indicate that the payment is being made in accordance with the requirements of this Order for deposit into the Virginia Environmental Emergency Response Fund (VEERF). If the Department has to refer collection of moneys due under this Order to the Department of Law, McGrath Rent Corp. shall be liable for attorneys' fees of 30% of the amount outstanding.

SECTION E: Administrative Provisions

1. The Board may modify, rewrite, or amend this Order with the consent of McGrath Rent Corp. for good cause shown by McGrath Rent Corp., or on its own motion pursuant to the Administrative Process Act, Va. Code § 2.2-4000 *et seq.*, after notice and opportunity to be heard.
2. This Order addresses and resolves only those violations specifically identified in Section C of this Order. This Order shall not preclude the Board or the Director from taking any action authorized by law, including but not limited to: (1) taking any action authorized by law regarding any additional, subsequent, or subsequently discovered violations; (2) seeking subsequent remediation of the facility; or (3) taking subsequent action to enforce the Order.
3. For purposes of this Order and subsequent actions with respect to this Order only, McGrath Rent Corp. admits to the jurisdictional allegations, and agrees not to contest, but does not admit, the findings of fact and conclusions of law contained herein.
4. McGrath Rent Corp. consents to venue in the Circuit Court of the City of Richmond for any civil action taken to enforce the terms of this Order.
5. McGrath Rent Corp. declares it has received fair and due process under the Administrative Process Act and the State Water Control Law and it waives the right to any hearing or other administrative proceeding authorized or required by law or regulation, and to any judicial review of any issue of fact or law contained herein. Nothing herein shall be construed as a waiver of the right to any administrative proceeding for, or to judicial review of, any action taken by the Board to modify, rewrite, amend, or enforce this Order.
6. Failure by McGrath Rent Corp. to comply with any of the terms of this Order shall constitute a violation of an order of the Board. Nothing herein shall waive the initiation of appropriate enforcement actions or the issuance of additional orders as appropriate by the Board or the Director as a result of such violations. Nothing herein shall affect appropriate enforcement actions by any other federal, state, or local regulatory authority.
7. If any provision of this Order is found to be unenforceable for any reason, the remainder of the Order shall remain in full force and effect.
8. McGrath Rent Corp. shall be responsible for failure to comply with any of the terms and conditions of this Order unless compliance is made impossible by earthquake, flood, other acts of God, war, strike, or such other unforeseeable circumstances beyond its control and not due to a lack of good faith or diligence on its part. McGrath Rent Corp. shall demonstrate that such circumstances were beyond its control and not due to a lack of good faith or diligence on its part. McGrath Rent Corp. shall notify the DEQ Regional Director verbally within 24 hours and in writing within three business days when circumstances are anticipated

to occur, are occurring, or have occurred that may delay compliance or cause noncompliance with any requirement of the Order. Such notice shall set forth:

- a. the reasons for the delay or noncompliance;
- b. the projected duration of any such delay or noncompliance;
- c. the measures taken and to be taken to prevent or minimize such delay or noncompliance; and
- d. the timetable by which such measures will be implemented and the date full compliance will be achieved.

Failure to so notify the Regional Director verbally within 24 hours and in writing within three business days, of learning of any condition above, which the parties intend to assert will result in the impossibility of compliance, shall constitute a waiver of any claim to inability to comply with a requirement of this Order.

9. This Order is binding on the parties hereto and any successors in interest, designees and assigns, jointly and severally.
10. This Order shall become effective upon execution by both the Director or his designee and McGrath Rent Corp.. Nevertheless, McGrath Rent Corp. agrees to be bound by any compliance date which precedes the effective date of this Order.
11. This Order shall continue in effect until:
 - a. The Director or his designee terminates the Order after McGrath Rent Corp. has completed all of the requirements of the Order;
 - b. McGrath Rent Corp. petitions the Director or his designee to terminate the Order after it has completed all of the requirements of the Order and the Director or his designee approves the termination of the Order; or
 - c. the Director or Board terminates the Order in his or its sole discretion upon 30 days' written notice to McGrath Rent Corp..

Termination of this Order, or any obligation imposed in this Order, shall not operate to relieve McGrath Rent Corp. from its obligation to comply with any statute, regulation, permit condition, other order, certificate, certification, standard, or requirement otherwise applicable.

12. Any plans, reports, schedules or specifications attached hereto or submitted by McGrath Rent Corp. and approved by the Department pursuant to this Order are incorporated into this Order. Any non-compliance with such approved documents shall be considered a violation of this Order.

13. The undersigned representative of McGrath Rent Corp. certifies that he or she is a responsible official authorized to enter into the terms and conditions of this Order and to execute and legally bind McGrath Rent Corp. to this document. Any documents to be submitted pursuant to this Order shall also be submitted by a responsible official of McGrath Rent Corp.
14. This Order constitutes the entire agreement and understanding of the parties concerning settlement of the violations identified in Section C of this Order, and there are no representations, warranties, covenants, terms or conditions agreed upon between the parties other than those expressed in this Order.
15. By its signature below, McGrath Rent Corp. voluntarily agrees to the issuance of this Order.

And it is so ORDERED this 1st day of July, 2021.



Thomas Faha, Regional Director
Department of Environmental Quality

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McGrath Rent Corp. voluntarily agrees to the issuance of this Order.

Date: MARCH 5, 2021 By: Mike Bray, Director of Real Estate
(Person) (Title)
McGrath Rent Corp.

~~Commonwealth of Virginia~~ ^{CM} State of Texas
City/County of Denton

The foregoing document was signed and acknowledged before me this 5 day of
MARCH, 2021, by Michael Bray who is
Director of Real Estate of McGrath Rent Corp., on behalf of the corporation.

Caroline Morell
Notary Public

132033645
Registration No.

My commission expires: 05/31/2023

Notary seal:

